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REMARKS

The Examiner has rejected Claims 1-18 under 35 U.S.C. 112, second paragraph. The claims have been amended to clarify what is being claimed, thus rendering such rejection moot.

The Examiner has rejected Claims 1-18 under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory subject matter. The claims have been amended to clarify what is being claimed, thus rendering such rejection moot.

The Examiner has further rejected Claims 1-18 under 35 U.S.C. 102(e) as being anticipated by Delurgio et al. (US 6,553,352). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove. Specifically, each of the independent claims have been amended to include, at least in part, the subject matter of Claims 6-14, as well as additional limitations believed to be novel, when taken in combination with the remaining limitations.

First, it appears that the excerpts from Delurgio relied upon by the Examiner are deficient in numerous respects. For example, the Examiner relies on Figures 2-5 (and the descriptions thereof) from Delurgio to make a prior art showing of applicant's claimed "simulating an optimal price" (see this or similar, but not identical, language in each of the independent claims, as amended).

After a careful review of such excerpt, however, it is clear that there is not even a suggestion in such excerpt of any sort of "simulating" an optimal price, as claimed, in combination with the remaining claim elements. While Delurgio suggests a method that enables a user to determine an optimal price, provides an interface for optimizing the prices of products for sale, and enables a user to determine optimum prices of products for sale, only applicant teaches and claims the act of "simulating" an optimal price which is capable of reflecting the dynamic modeling of a market.

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Despite the foregoing paramount deficiencies in the Delurgio and in the spirit of expediting the prosecution of the present application so as to bring closure to this matter, applicant has amended each of the independent claims to substantially include the subject matter of Claims 6-14, as well as additional limitations believed to be novel, to ensure that Delurgio is clearly distinguished.

With respect to the subject matter of former Claim 6, the Examiner relies Delurgio to make a prior art showing of applicant's claimed identification of "a distribution of prices associated with at least one non-optimized supplier" (see this or similar, but not identical, language in each of the independent claims). After a careful review of the cited excerpts from Delurgio, however, it is clear that there is not even a suggestion of any sort of non-optimized supplier, let alone identification of a distribution of prices associated with at least one non-optimized supplier.

With respect to the subject matter of former Claim 7, the Examiner relies Delurgio to make a prior art showing of applicant's claimed production of "a set of non-optimized prices ... based on the distribution of prices associated with the at least one non-optimized supplier" (see this or similar, but not identical, language in each of the independent claims). Again, after a careful review of the cited excerpts from Delurgio, however, it is clear that there is not even a suggestion of any sort of non-optimized supplier, let alone a set of non-optimized prices based on the distribution of prices associated with the at least one non-optimized supplier.

Turning now to the subject matter of former Claim 9, the Examiner relies on Delurgio to make a prior art showing of applicant's claimed optimal price that is generated "receiving a plurality of prices associated with a price-frequency mathematical distribution, a number of competitors, a business objective, and a cost associated with a good or service" (see this or similar, but not identical, language in each of the independent claims). Applicant has carefully reviewed the cited excerpts from Delurgio. There is simply no suggestion of any sort of receipt of a plurality of prices associated with a price-frequency mathematical distribution, a number of competitors, a business objective, etc., as claimed.

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Regarding the subject matter of former Claim 10, the Examiner relies Delurgio to make a prior art showing of applicant's claimed optimal price that is generated by "calculating the optimal price based on the prices, number of competitors, business objective, and cost associated with the good or service" (see this or similar, but not identical, language in each of the independent claims). For reasons similar to those set forth hereinabove with respect to Claim 9, Delurgio is completely devoid of any sort of a plurality of prices associated with a price-frequency mathematical distribution, a number of competitors, a business objective, etc., as claimed, and thus inherently lacks any sort of calculation of an optimal price based on the same.

The subject matter of former Claim 11 requires that the aforementioned "business objective is selected from the group consisting of maximizing revenue for a good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, maximizing market share for the good or service, and maximizing earnings before interest and tax (EBIT) for the good or service" (see this or similar, but not identical, language in each of the independent claims). The Examiner relies on Delurgio to make a prior art showing of applicant's claimed feature. However, Delurgio does not even suggest any of the business objectives required by the claims, namely maximizing revenue for a good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, maximizing market share for the good or service, and maximizing earnings before interest and tax (EBIT) for the good or service.

With respect to the subject matter of former Claims 12-14, the Examiner relies Delurgio to make a prior art showing of applicant's claimed "wherein one price for each competitor is selected from the distribution of prices" and "the optimal price is compared with the prices of at least one of the competitors and results of each comparison is stored" (see this or similar, but not identical, language in each of the independent claims). After a careful review of the cited excerpts from Delurgio, however, it is clear that there is not even a suggestion of any sort of feedback mechanism.

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The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

This criterion has simply not been met by the Delurgio reference, especially in view of the amendments made hereinabove. A notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Despite the foregoing paramount deficiencies in the Delurgio excerpts relied upon by the Examiner and in the spirit of expediting the prosecution of the present application and bringing closure to this matter, applicant has amended each of the independent claims to include the following subject matter to ensure that Delurgio is clearly distinguished:

"wherein feedback is utilized in generating an updated optimal price by identifying a result of utilizing the optimal price,

where the at least one result is stored, and a search is performed for the updated optimum price that optimizes a user-selected business objective selected from the group consisting of maximizing revenue for a good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, maximizing market share for the good or service, and maximizing earnings before interest and tax (EBIT) for the good or service,

where

a) the result includes an expected result,

b) the expected result is compared with an actual

result,

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c) it is determined whether an optimization is required based on the comparison, and

d) if it is determined that the optimization is required, a new price value is identified" (see this or similar, but not identical, language in each of the independent claims).

Applicant has thus fleshed out the feedback feature in a way that clearly distinguishes the prior art. Again, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Applicant further argues that the Examiner's rejection is deficient with respect to the remaining dependent claims. Just by way of example, with respect to the subject matter of former Claim 3, the Examiner relies Delurgio to make a prior art showing of applicant's claimed "sets of one or more prices [that] are customizable." After a careful review of the cited excerpts from Delurgio, however, it is clear that there is not even a suggestion of any sort of customization, let alone the customization claimed by applicant.

With respect to the subject matter of former Claims 3 and 4, the Examiner relies Delurgio to make a prior art showing of applicant's claimed "comparing the sets of one or more prices" and "reporting on the comparison." Again, after a careful review of the cited excerpts from Delurgio, however, it is clear that there is not even a suggestion of any sort of comparison of one or more prices, let alone reporting the same.

Finally, with respect to the subject matter of former Claim 15, the Examiner relies Delurgio to make a prior art showing of applicant's claimed "wherein the method is performed by a plurality of components including a frequency distribution engine, a probability of win engine, an expected results engine, an optimization update engine, a bid engine, a market place engine, and a financial accumulator engine." Again, it is clear after a careful review of the cited excerpts from Delurgio that there is a complete lacking of the components clearly required by applicant's

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claims, namely a frequency distribution engine, a probability of win engine, an expected results engine, an optimization update engine, a bid engine, a market place engine, and a financial accumulator engine.

Again, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

Still yet, applicant brings the following subject matter in new Claims 19-37 to the Examiner's attention, for full consideration:

"wherein a graphical user interface is included for inputting a set of the competitor prices and the number of competitors" (see Claim 19);

"wherein the graphical user interface is adapted for inputting the business objective" (see Claim 20);

"wherein a graphical user interface is included for inputting a value for a cost-per-unit, an error rate, and an optimization update" (see Claim 21);

"wherein the price-frequency mathematical distribution is used to estimate the set of the competitor prices" (see Claim 22);

"wherein the price-frequency mathematical distribution is estimated using the set of competitor prices" (see Claim 23);

"wherein the price-frequency mathematical distribution is converted to an expected probability of a customer purchase based on the number of competitors" (see Claim 24);

"wherein the price-frequency mathematical distribution is converted to a table of prices with a frequency of a price within the table corresponding to the price-frequency mathematical distribution" (see Claim 25);

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“wherein each price, probability of a customer purchase, and cost-per-unit are used to form a partial income statement for each member of the plurality of prices” (see Claim 26);

“wherein each partial income statement is comprised of financial terms including revenue, cost-of-goods, and gross profit” (see Claim 27);

“wherein a set of the partial income statements are stored within a table” (see Claim 28);

“wherein a maximum revenue value and a maximum profit value are identified along with corresponding prices” (see Claim 29);

“wherein a probability of a customer purchase is determined for the optimal price” (see Claim 30);

“wherein a number of randomly selected prices corresponding to the number of competitors is chosen” (see Claim 31);

“wherein a lowest price in a set of prices is identified as a winning bid along with a corresponding supplier, the lowest price including the number of randomly selected prices and the optimal price” (see Claim 32);

“wherein the winning bid and the probability of a customer purchase is added to an actual results table comprising of fields identifying a winning supplier, lowest price, cost-per-unit, gross profit, probability of a customer purchase, and actual winrate” (see Claim 33);

“wherein a value for competition is calculated by summing each event of randomly selecting a set of prices corresponding to the number of competitors” (see Claim 34);

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"wherein a value is calculated representing a sum of wins corresponding to the supplier" (see Claim 35);

"wherein the actual winrate is calculated by dividing the sum of wins by the value for competition" (see Claim 36);

"wherein if a condition where the value for competition is equal to or greater than an optimization update window value, and the actual winrate is greater than the expected probability of a customer purchase plus a tolerable error window value, or the actual winrate is less than the probability of a customer purchase minus the tolerable error window value, then the price-frequency mathematical distribution is adjusted so that a new expected probability of a customer purchase is equal to the actual winrate, and recorded values of wins and competition are set to zero" (see Claim 37).

Yet again, a notice of allowance or specific prior art showing of each of the foregoing claim elements, in combination with the remaining claimed features, is respectfully requested.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. For payment of any fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. ABE1P003).

Respectfully submitted,

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